

ESTTA Tracking number: **ESTTA124886**

Filing date: **02/14/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	MasterCard International Incorporated
Granted to Date of previous extension	02/14/2007
Address	2000 Purchase Street Purchase, NY 10577-2509 UNITED STATES

Attorney information	Russell H. Falconer Baker Botts L.L.P. 30 Rockefeller Plaza, 44th Floor New York, NY 10112-4498 UNITED STATES nytmdpt@bakerbotts.com, marks@mastercard.com, suzanne.hengl@bakerbotts.com, paul.reilly@bakerbotts.com, madalyn.basora@bakerbotts.com
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### Applicant Information

Application No	78823156	Publication date	10/17/2006
Opposition Filing Date	02/14/2007	Opposition Period Ends	02/14/2007
Applicant	SMITH, BRUCE NEILL 3460 Briarway Beaumont, TX 77706 UNITED STATES		

### Goods/Services Affected by Opposition

Class 025. All goods and services in the class are opposed, namely: Shirts, caps, and coats
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Attachments	Notice of Opposition.pdf ( 6 pages )(319605 bytes )
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Signature	/Paul J. Reilly/
Name	Paul J. Reilly
Date	02/14/2007

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**IN THE MATTER OF APPLICATION**

Applicant: Bruce Neill Smith  
Mark: BANK OF JESUS CHRIST & Design  
Serial No.: 78/823,156  
Filed: February 24, 2006  
Published in  
the **Official Gazette**: October 17, 2006

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MASTERCARD INTERNATIONAL	:	
INCORPORATED,	:	
	:	
Opposer,	:	Opposition No. __, __
	:	
v.	:	
	:	
BRUCE NEILL SMITH,	:	
	:	
Applicant.	:	
	:	
	X	

**NOTICE OF OPPOSITION**

MasterCard International Incorporated, a Delaware corporation located and doing business at 2000 Purchase Street, Purchase, New York 10577-2509 (hereinafter referred to as “Opposer” or “MasterCard”) believes that it will be damaged by the registration of United States Trademark Application Serial No. 78/823,156, filed on February 24, 2006 by Bruce Neill Smith for a mark consisting of or comprising an interlocking circles design and the words “Bank of Jesus Christ” for shirts, caps, and coats in International Class 25. MasterCard, having been previously granted an extension of time to oppose, hereby opposes the foregoing application. The specific grounds for this opposition are as follows:

1. MasterCard is an incorporated association of banks and other domestic and foreign financial institutions whose purpose is, inter alia, to facilitate various financial services transactions, including the interchange of funds through payment cards, credit cards, debit cards and smart cards on a worldwide basis.

2. MasterCard has been in the payment card business since 1966 and has become well and favorably known to members of the public, as well as to members of the banking and financial services community, as a leader in the field of payment cards and related services and products. Since 1966, MasterCard has used a prominent design, namely, the famous “Interlocking Circles” device, to identify its various services and products. MasterCard initially owned and administered the celebrated MASTER CHARGE payment program and it now owns and administers the MASTERCARD payment card program. There are over 725 million MASTERCARD payment cards in circulation worldwide bearing the Interlocking Circles device, which have been issued by approximately 25,000 licensed member banks and financial institutions having more than 200,000 branches. Approximately half of these cards are currently in circulation in the United States. Opposer’s MASTERCARD payment cards are accepted at approximately 23 million locations, including retail merchants, automated teller machines, and cash advance locations, and more than a trillion dollars worth of purchases or cash advances have been transacted during the past year using a payment card bearing the MASTERCARD and Interlocking Circles device. Each retail establishment, ATM and cash advance location which accepts MasterCard’s payment cards is required to post decals bearing the MASTERCARD and “Interlocking Circles” device mark at the point of sale. During the past three years alone, MasterCard has expended in excess of \$600,000,000 advertising and promoting its payment card services and other related products and services in connection with the MASTERCARD and

“Interlocking Circles” device marks and variants in North America and, in years prior, spent comparably substantial sums.

3. Each and every MASTER CHARGE and MASTERCARD payment card that has ever been issued and virtually all advertising therefore has borne MasterCard’s famous and highly distinctive “Interlocking Circles” device. MasterCard has also extensively used its “Interlocking Circles” device on and in connection with wearing apparel, including, shirts, jackets, sweaters, sweat shirts, visors, caps etc., as well as a host of personal items, e.g., key rings.

4. In addition to its prior common law rights in the “Interlocking Circles” device marks and variants, Opposer is also the owner of numerous United States trademark and service mark applications and registrations, each of which incorporates the “Interlocking Circles” device, including, but not limited to, the following:

<u>Mark</u>	<u>Reg. No.</u>
MASTERCARD & Design	1,257,853
Interlocking Circles Design	1,494,516
Interlocking Circles Design	1,723,718
Globe Hologram Design	1,738,276
MASTERCARD & Design	1,890,786
Interlocking Circles Design	2,038,134

These registrations are valid and subsisting, uncanceled and unrevoked, and in full force and effect. Many of the foregoing registrations are incontestable pursuant to 15 U.S.C. § 1065.

Hereinafter MasterCard’s foregoing marks, including those registered and/or used in commerce, are referred to individually and/or collectively as the “Interlocking Circles Mark”.

5. Use of the Interlocking Circles Mark has been continuous since 1966 and has not been abandoned. As a result of enormous advertising, promotion, card usage, point of sale signage and other extensive usage, the Interlocking Circles Mark has become famous and one of the most renowned brands in the world, including the United States. It represents an asset of enormous goodwill of inestimable value to MasterCard.

6. As a result of the long, extensive and widespread use, advertising, promotion and registration of the Interlocking Circles Mark on and in association with MasterCard's various services and products, consumers have become accustomed to associate marks consisting of or containing an interlocking or overlapping circles device with Opposer.

7. On information and belief, on February 24, 2006, Applicant, Bruce Neill Smith, an individual, having an address of 3460 Briarway, Beaumont, Texas 77706, filed Application Serial No. 78/823,156 to register an interlocking circles design mark with the words "Bank of Jesus Christ" based on an intent to use the alleged mark on "shirts, caps, and coats" in International Class 25 (hereinafter referred to as the "application-in-opposition", unless otherwise specified).

8. Registration of Applicant's alleged mark, which is the subject of the application-in-opposition, is barred by the provisions of Section 2(d) of the Trademark Act of 1946 because the said mark consists of or comprises a mark which so resembles Opposer's Interlocking Circles Mark, which is the subject of prior registrations or previously filed applications to register marks in the United States Patent and Trademark Office, as to be likely, when used in connection with the alleged goods of the Applicant to cause confusion, mistake or deception.

9. Opposer has priority over Applicant because Opposer's use, application filing dates and/or registration dates precede the Applicant's filing date for his application at issue and/or any alleged date of first use of Applicant's purported mark which is the subject of the application-in-opposition.

10. Applicant's alleged mark and Opposer's Interlocking Circles Mark are similar. On information and belief, the goods to which Applicant's alleged mark will allegedly be applied and the goods/services in connection with which Opposer's Interlocking Circles Mark is registered and/or used are similar, related or complementary.

11. Accordingly, Applicant's alleged mark which is the subject of the application-in-opposition, so resembles Opposer's foregoing and previously used and/or registered Interlocking Circles Mark, as to be likely to cause confusion, to cause mistake or to deceive with consequent injury to Opposer. The likelihood of confusion, mistake or deception that would also arise from concurrent use and registration of the applied for mark with Opposer's use and registration of its Interlocking Circles Mark is that (a) persons are likely to believe that Applicant's products have their source in Opposer, or (b) that Applicant and its goods are a version of Opposer's marks or are in some way legitimately connected or affiliated with, sponsored, approved, endorsed or licensed by Opposer when, in fact, they are not.

12. Accordingly, registration of Applicant's claimed mark is barred by the provisions of Section 2(d) of the Trademark Act of 1946, 15 U.S.C. § 1052(d) on the grounds that Applicant's mark so resembles Opposer's Interlocking Circles Mark as to be likely to cause confusion, mistake and/or deception, all to the damage of Opposer.

13. Further, Opposer's inherently distinctive Interlocking Circles Mark became famous prior to the filing date of Applicant's application-in-opposition and/or any

claimed date of first use by Applicant of the alleged mark which is the subject of U.S. Application Serial No. 78/823,156. Registration and use of Applicant's alleged mark would likely dilute or dilute the distinctiveness of Opposer's famous and inherently distinctive Interlocking Circles Mark in violation of 15 U.S.C. § 1125(c). Accordingly, Applicant's alleged mark is not entitled to registration under 15 U.S.C. § 1052(f) and Section 13 of the Lanham Act, 15 U.S.C. § 1063.

14. Opposer will be damaged by the issuance of a registration sought by Applicant within the meaning of 15 U.S.C. §1063 because such registration would support and assist Applicant in the confusing, misleading, deceptive and/or dilutive use of Applicant's alleged mark which is the subject of the application-in-opposition, and would give color of exclusive statutory rights to Applicant in violation and derogation of the prior and superior rights of Opposer.

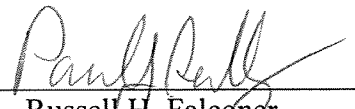
WHEREFORE, Opposer prays that this opposition be sustained in its favor, that registration be denied to Applicant on its Application Serial No. 78/823,156 and that the Board grant all further relief to Opposer that is necessary and just in these circumstances.

Respectfully submitted,

BAKER BOTTS LLP

Dated: February 14, 2007

By:

  
Russell H. Falconer  
Paul J. Reilly  
30 Rockefeller Plaza  
New York, NY 10112-0228  
(212) 408-2634  
Attorneys for Opposer